

California Ban on High-Capacity Gun Magazines Struck Down

BIANCA BRUNO March 29, 2019

SAN DIEGO (CN) – A federal judge Friday declared California's ban on high-capacity gun magazines over 10 rounds unconstitutional, blocking the state from enforcing the voter-approved ban outlined in Proposition 63.

U.S. District Judge Roger Benitez, a George W. Bush appointee, prefaced the introduction to his 86-page [order](#) released Friday afternoon granting summary judgment in favor of gun owner Virginia Duncan and the California Pistol & Rifle Association by stating "individual liberty and freedom are not outmoded concepts."

He proceeded to cite the stories of three women who were at their homes – not in California, but in Florida and Georgia – when they were shot at by intruders toting guns.

Those stories of women home alone when ambushed by armed robbers also peppered Benitez's comments during the nearly 4-hour long court [hearing](#) on the motion for summary judgment last summer where he suggested women who were attacked and had lower capacity gun magazines to defend themselves would not be able to stop an assailant, saying "now you're raped and now you're dead."

He also suggested at the court hearing, based on a reading of the Second Amendment, it "would probably be okay" for someone to own a bazooka or grenade.

"How do we make the decision of how far we allow the state to interfere in what is arguably protected by the Second Amendment? Benitez asked at the court hearing.

Friday's court order follows a Ninth Circuit [decision](#) last summer which upheld Benitez's [preliminary injunction](#) in 2017 barring the [state](#) from enforcing Proposition 63, which was passed by 63 percent of California voters in 2016 and blocked gun owners from possessing magazines which can hold more than 10 rounds of ammunition.

In his order Friday, Benitez cited a need for self-defense for the 39 million Californians who "endured" 56,609 robberies, 105,391 aggravated assaults, 95,942 residential burglaries and 423 homicides in victims' residences in 2017 as a reason why California's ban on high-capacity magazines must not be enforced.

Benitez wrote "there were no mass shootings in 2017."

The [mass shooting tracker](#) – which defines mass shootings as an incident of violence in which four or more people are shot – lists multiple mass shootings in California in 2017.

The judge wrote that Californians should have legal access to higher-capacity gun magazines for everyday self protection and that the state's interest in putting Proposition 63 on the ballot in order to prevent mass shootings was a misplaced goal. Benitez said due to media attention "mass shootings can seem to be a common problem, but are in fact, exceedingly rare."

"At the same time robberies, rapes and murders of individuals are common, but draw little public notice," Benitez added.

Similarly, the judge rejected the argument that the state was not infringing on gun owner's Second Amendment rights by banning large-capacity magazines because they increase the lethality of gun violence, saying: "Nothing in the Second Amendment makes lethality a factor to consider because a gun's lethality, or dangerousness, is assumed."



A variety of semi-automatic rifles.(Dar Dovarganes, Associated Pre

"The Second Amendment does not exist to protect the right to bear down pillows and foam baseball bats. It protects guns and every gun is dangerous," Benitez wrote.

He added that if the "too lethal" standard is applied, the government may eventually decide the only guns "safe" to possess and powerful enough to provide self-defense may only hold a single round of ammunition.

The judge found because magazines over 10 rounds are commonly owned by "law-abiding responsible citizens for lawful uses like self-defense," ownership of the weapons passes the Supreme Court's *Heller* test which found citizens have a right to keep and bear arms that are not unusual and are "in common use."

"Neither magazines, nor rounds of ammunition, nor triggers, nor barrels are specifically mentioned in the Second Amendment. Neither are they mentioned in *Heller*. But without a right to keep and bear triggers, or barrels, or ammunition and the magazines that hold ammunition, the Second Amendment right would be meaningless," Benitez wrote.

"Although it may be argued that a 100-round, or a 50-round, or possibly even a 30-round magazine may not pass the *Heller* hardware test, because they are 'unusual,' the state has proffered no credible evidence that would support such a finding," Benitez added.

In a comment on Twitter, California Rifle & Pistol Association President C.D. Michel – who is also senior partner at Michel & Associates, the firm representing Duncan and the gun organization – called Benitez's ruling "glorious and compelling."

A spokesperson for Attorney General Xavier Becerra said in a statement: "We are committed to defending California's common sense gun laws – we are reviewing the decision and will evaluate the next steps."

[Ninth Circuit Strikes Down California Ban on High-Capacity Gun Magazines](#)

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